

BEFORE THE
POSTAL RATE COMMISSION

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

COMPLAINT ON POST E.C.S.

DOCKET NO. C99-1

RESPONSE OF UNITED PARCEL SERVICE
TO UNITED STATES POSTAL SERVICE
MOTION FOR PARTIAL RECONSIDERATION
OF P.O. RULING NO. C99-1/2
(June 18, 1999)

United Parcel Service ("UPS") hereby responds to the United States Postal Service's Motion for Partial Reconsideration of P.O. Ruling No. C99-1/2 (June 8, 1999) ("Postal Service Motion"). In its motion, the Postal Service asks the Presiding Officer to (1) "establish limits on the scope of this proceeding" that would restrict the proceeding to "the issue of whether Post E.C.S is a 'postal' service," Postal Service Motion at 1, 5, and (2) "issue a procedural schedule identifying the sequence of events expected to take place" in the case. *Id.* at 1. The Postal Service also asks that, "if the Commission is persuaded that Post E.C.S. is a postal service . . . , the Commission should issue its findings and conclusions in the form of a recommended decision" *Id.* at 7.

The Scope of the Proceeding

As UPS has already noted, "the issues [in this case] and therefore the scope of [the proceeding] are defined by the pleadings." Motion of United Parcel Service to Compel United States Postal Service to Respond to Interrogatories UPS/USPS-1 through UPS/USPS-7 and UPS/USPS-9 through UPS/USPS-20 (June 8, 1999) ("Motion

to Compel") at 3. Those issues include whether PostECS complies with the classification and ratemaking criteria of the statute. Complaint, ¶¶ 10-11, 12-18. Thus, the Commission should not limit this proceeding to the question whether PostECS is mail, or a postal service.

Nevertheless, UPS has already agreed that, at this stage of the case, it will not press for answers to its initial interrogatories on those particular issues, since those issues could become moot depending on the Commission's resolution of the threshold jurisdictional issue. Motion to Compel at 3 n.3. Accordingly, UPS has no objection to a ruling which limits the initial phase of the proceeding (including discovery in that phase) to the question whether PostECS is mail or a postal service subject to the Commission's jurisdiction. Depending on its resolution of that question, the Commission will then be in a better position to decide later what other steps are required in the case.

As for the Postal Service's request that the Commission issue a recommended decision on the question whether PostECS is within the Commission's jurisdiction, UPS submits that such a course would not be proper. In fact, the Commission has already rejected the approach advocated by the Postal Service. In Docket No. C96-1 (the Pack 'N Send case), the Commission in virtually identical circumstances concluded that "a recommended decision simply declaring that Pack & Send is a postal service . . . would be a hollow vessel lacking any recommendation of substance upon which the Governors could act under section 3625." Order No. 1145 at 24 (December 16, 1996), 61 Fed. Reg. 67356, 67362 (December 20, 1996). As the Commission there stated, at that point in the case there would be "no substantive recommendation for the Commission to make under § 3622 or § 3623," *id.*, the sections which specify when a

recommended decision should be issued. Instead, the Commission should issue a declaratory order (as it did in Docket No. C96-1) on the question of the Commission's jurisdiction, and hold further proceedings in abeyance pending the Postal Service's response to the Commission's order. See Order No. 1145 at 25, ¶¶ 2, 3, 61 Fed. Reg. at 67363.

The Procedural Schedule

The Postal Service asks the Presiding Officer to issue a full procedural schedule. Postal Service Motion at 5-9. UPS disagrees that the absence of a procedural schedule at this point would "deprive[] the Postal Service of fair notice as to how this case will progress." *Id.* at 6. Nevertheless, UPS does not oppose the request that a procedural schedule identifying the stages in the initial jurisdictional phase of the proceeding be issued.

On the other hand, the Postal Service's suggested two-stage sequence of events (UPS testimony and Postal Service response, with no rebuttal by UPS) makes no sense. It would give the Postal Service an unfair advantage by depriving UPS of the opportunity to rebut any case that the Postal Service may choose to present in opposition to UPS's case-in-chief -- an opportunity that is accorded in all Commission proceedings.

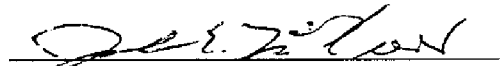
The Postal Service's approach of cutting off all discovery addressed to it when UPS files its case-in-chief, United States Postal Service Comments on the Special Rules of Practice (June 8, 1999) at 6, would also deprive UPS of due process by not allowing sufficient discovery.

The schedule in the initial phase of this case should follow the approach usually followed in Commission proceedings. That approach is generally embodied in the Special Rules of Practice already proposed by the Presiding Officer, with the modification suggested by the Office of the Consumer Advocate in its Comments in Response to P.O. Ruling No. C99-1/2 (June 8, 1999) at 2-3. Specifically, the Special Rules and the schedule should provide for UPS to file its case-in-chief followed by a period for discovery on that testimony; UPS submits that a few weeks should suffice. The Postal Service would then file any testimony it wishes to present, with discovery on that testimony. UPS would have an opportunity to present rebuttal testimony. Discovery on the Postal Service should be permitted until a week before the filing of UPS's rebuttal case (with interrogatory responses due within 7 days).¹ Finally, there

1. UPS opposes the Postal Service's suggestion that the time periods in the proposed Special Rules be extended. United States Postal Service Comments on the Special Rules of Practice (June 8, 1999) at 2-4. The Postal Service has not advanced any legitimate justification for its request. Instead, consistent with the approach in Docket No. C96-1 and as suggested by UPS in our Comments in Response to Presiding Officer's Ruling No. C99-1/2 (June 8, 1999), further proceedings in this case -- which was initiated on October 6, 1998 -- should be expedited, not extended.

would be a short briefing schedule after the record is closed, with oral argument to be scheduled if appropriate.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "John E. McKeever", written over a horizontal line.

John E. McKeever
Kenneth G. Starling
Nicole P. Kangas
Attorneys for United Parcel Service

PIPER & MARBURY L.L.P.
3400 Two Logan Square
18th and Arch Streets
Philadelphia, PA 19103
(215) 656-3300

and

1200 19th Street, N.W.
Washington, DC 20036
(202) 861-3900

Of Counsel

CERTIFICATE OF SERVICE

I hereby certify that on this date I have caused to be served the foregoing document on all parties to this proceeding by first class mail, postage prepaid, in accordance with Section 12 of the Rules of Practice.

Nicole P. Kangas
Nicole P. Kangas

Dated: June 18, 1999
Philadelphia, PA